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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL BORREGO,

Defendant and Appellant.

B303066

(Los Angeles County  
Super. Ct. No. GA028719)

APPEAL from an order of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Dismissed.

Paul Stubb, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Daniel Borrego appeals from an order denying his petition for resentencing. His appellate counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436. As we explain, the order is not appealable.

In 1996, a jury found Borrego guilty of carjacking (Pen. Code,<sup>1</sup> § 215, subd. (a)) and found that he personally used a firearm (§§ 1203.06, 12022.5, subd. (a)(2)). The trial court then found that Borrego had suffered a prior conviction within the meaning of the Three Strikes law. On January 28, 1997, the trial court sentenced Borrego to 33 years in prison. That sentence included a 10-year term under section 12022.5 and a five-year term under section 667.5.

Thereafter, Senate Bill No. 620 became effective in January 2018. (Stats. 2017, ch. 682, § 1.) Per that legislation, trial courts now have discretion to strike firearm enhancements in the interest of justice. (§§ 12022.5, subd. (c); 12022.53, subd. (h).) Also, Senate Bill No. 1393, which amended sections 667 and 1385, became effective in January 2019. (Stats. 2018, ch. 1013, §§ 1, 2.) Per that legislation, trial courts now have discretion to strike enhancements for serious felony convictions.

On August 21, 2019, Borrego petitioned for resentencing under Senate Bill Nos. 620 and 1393. The next day, the trial court denied the petition, noting that Borrego was sentenced in 1997 and that the remittitur had issued in 1998.

Borrego appealed. After review of the record, Borrego's court-appointed counsel filed an opening brief which raised no issues, asking this court to conduct an independent review of the record, under *People v. Wende, supra*, 25 Cal.3d at page 441. By

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<sup>1</sup> All further statutory references are to the Penal Code.

letter dated May 8, 2020, we advised Borrego that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. He did not submit a brief or letter.

Senate Bill Nos. 620 and 1393 apply to cases not yet final on the date the law became effective. (*People v. Fox* (2019) 34 Cal.App.5th 1124, 1127 [Senate Bill No. 620]; *People v. Garcia* (2018) 28 Cal.App.5th 961, 973 [Senate Bill No. 1393].) Borrego's case was final when the time for him to petition the United States Supreme Court for a writ of certiorari expired, which was long before the bills went into effect. (See *People v. Harris* (2018) 22 Cal.App.5th 657, 659, fn. 2.) The trial court therefore lacked jurisdiction to grant Borrego's resentencing request. (*People v. Johnson* (2019) 32 Cal.App.5th 938, 941; *People v. Fuimaono* (2019) 32 Cal.App.5th 132, 135.) As such, Borrego's substantial rights were not affected and the order denying the petition is not appealable; hence, the appeal must be dismissed. (See *Fuimaono*, at p. 135.)

We have reviewed the record and are satisfied that Borrego's attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende*, *supra*, 25 Cal.3d at p. 441.)

### **DISPOSITION**

The appeal is dismissed.

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DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.